

# VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

REENROLLED

## CHAPTER 815

*An Act to amend and reenact §§ 2.1-1.3, 2.1-1.7, 2.1-20.4, 9-6.23, and 9-6.25:1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 9 a chapter numbered 43, consisting of sections numbered 9-334 through 9-343, relating to the Virginia Government Competition Act of 1995, including the creation of the Commonwealth Competition Council.*

[S 994]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.3, 2.1-1.7, 2.1-20.4, 9-6.23, and 9-6.25:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 9 a chapter numbered 43, consisting of sections numbered 9-334 through 9-343, as follows:

§ 2.1-1.3. Entities subject to standard nomenclature.

The following independent administrative entities are subject to the standard nomenclature provisions of § 2.1-1.2:

Chesapeake Bay Local Assistance Department.

Commonwealth Competition Council.

Department of Accounts.

Department for the Aging.

Department of Agriculture and Consumer Services.

Department of Alcoholic Beverage Control.

Department of Aviation.

Department of Conservation and Recreation.

Department of Correctional Education.

Department of Corrections.

Department of Criminal Justice Services.

Department for the Deaf and Hard-of-Hearing.

Department of Economic Development.

Department of Education.

Department of Emergency Services.

Department of Environmental Quality.

Department of Employee Relations Counselors.

Department of Fire Programs.

Department of Forestry.

Department of Game and Inland Fisheries.

Department of General Services.

Department of Health.

Department of Health Professions.

Department of Historic Resources.

Department of Housing and Community Development.

Department of Information Technology.

Department of Labor and Industry.

Department of Medical Assistance Services.

Department of Mental Health, Mental Retardation and Substance Abuse Services.

Department of Military Affairs.

Department of Mines, Minerals and Energy.

Department of Minority Business Enterprise.

Department of Motor Vehicles.

Department of Personnel and Training.

Department of Planning and Budget.

Department of Professional and Occupational Regulation.

Department of Rail and Public Transportation.

Department of Rehabilitative Services.  
 Department for Rights of Virginians With Disabilities.  
 Department of Social Services.  
 Department of State Police.  
 Department of Taxation.  
 Department of Transportation.  
 Department of the Treasury.  
 Department of Veterans' Affairs.  
 Department for the Visually Handicapped.  
 Department of Youth and Family Services.  
 Governor's Employment and Training Department.

§ 2.1-1.7. State councils.

A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

Adult Education and Literacy, Virginia Advisory Council for  
 Agricultural Council, Virginia  
 Alcohol and Drug Abuse Problems, Governor's Council on  
 Apprenticeship Council  
 Blue Ridge Regional Education and Training Council  
 Child Day Care and Early Childhood Programs, Virginia Council on  
 Child Day-Care Council  
 Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion  
*Commonwealth Competition Council*  
 Commonwealth's Attorneys' Services Council  
 Developmental Disabilities Planning Council, Virginia  
 Disability Services Council  
 Equal Employment Opportunity Council, Virginia  
 Health Services Cost Review Council, Virginia  
 Housing for the Disabled, Interagency Coordinating Council on  
 Human Rights, Council on  
 Human Services Information and Referral Advisory Council  
 Indians, Council on  
 Interagency Coordinating Council, Virginia  
 Job Training Coordinating Council, Governor's  
 Land Evaluation Advisory Council  
 Local Debt, State Council on  
 Long-Term Care Council  
 Maternal and Child Health Council  
 Military Advisory Council, Virginia  
 Needs of Handicapped Persons, Overall Advisory Council on the  
 Prevention, Virginia Council on Coordinating  
 Public Records Advisory Council, State  
 Rate-setting for Children's Facilities, Interdepartmental Council on  
 Revenue Estimates, Advisory Council on  
 Southside Virginia Marketing Council  
 Specialized Transportation Council  
 State Health Benefits Advisory Council  
 Status of Women, Council on the  
 Technology Council, Virginia  
 Virginia Business-Education Partnership Program, Advisory Council on the  
 Virginia Recycling Markets Development Council.

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Council on Information Management  
 Higher Education, State Council of  
 Independent Living Council, Statewide  
 Rehabilitation Advisory Council, Statewide  
 Rehabilitation Advisory Council for the Blind, Statewide  
 World Trade Council, Virginia.

§ 2.1-20.4. Bodies receiving compensation.

A. Notwithstanding any other provision of law, the following commissions, boards, etc., shall be those which receive compensation from state funds pursuant to § 2.1-20.3:

Accountancy, Board for  
 Agriculture and Consumer Services, Board of  
 Air Pollution Control Board, State  
 Airports Authority, Virginia  
 Apprenticeship Council  
 Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for  
 Athletic Board, Virginia  
 Auctioneers Board  
 Audiology and Speech-Language Pathology, Board of  
 Aviation Board, Virginia  
 Barbers, Board for  
 Branch Pilots, Board for  
 Building Code Technical Review Board, State  
 Chesapeake Bay Local Assistance Board  
 Child Day Care and Early Childhood Programs, Virginia Council on  
 Coal Mining Examiners, Board of  
 College Building Authority  
*Commonwealth Competition Council*  
 Commonwealth Transportation Board  
 Conservation and Development of Public Beaches, Board on  
 Conservation and Recreation, Board of  
 Contractors, Board for  
 Correctional Education, Board of  
 Corrections, Board of  
 Cosmetology, Board for  
 Criminal Justice Services Board  
 Deaf and Hard-of-Hearing, Advisory Board for the  
 Dentistry, Board of  
 Education, State Board of  
 Education Loan Authority, Virginia - Board of Directors  
 Elections, State Board of  
 Environment, Council on the  
 Fire Services Board, Virginia  
 Funeral Directors and Embalmers, Board of  
 Game and Inland Fisheries, Board of  
 Geology, Board for  
 Health, State Board of  
 Health Professions, Board of  
 Hearing Aid Specialists, Board for  
 Higher Education, State Council of  
 Historic Resources, Board of  
 Housing and Community Development, Board of  
 Information Management, Council on  
 Marine Resources Commission  
 Medical Assistance Services, Board of

Medical Complaint Investigation Committee  
 Medicine, Board of  
 Mental Health, Mental Retardation and Substance Abuse Services Board, State  
 Milk Commission  
 Mineral Mining Examiners, Board of  
 Nursing, Board of  
 Nursing Home Administrators, Board of  
 Occupational Therapy, Advisory Board on  
 Oil and Gas Conservation Board, Virginia  
 Opticians, Board for  
 Optometry, Board of  
 Pesticide Control Board  
 Pharmacy, Board of  
 Physical Therapy, Advisory Board on  
 Port Authority, Board of Commissioners of the Virginia  
 Professional and Occupational Regulation, Board for  
 Professional Counselors, Board of  
 Professional Soil Scientists, Board for  
 Psychology, Board of  
 Public Defender Commission  
 Public School Authority, Virginia  
 Purchases and Supply Appeals Board  
 Real Estate Appraiser Board  
 Real Estate Board  
 Recreation Specialists, Board of  
 Rehabilitative Services, Board of  
 Respiratory Therapy, Advisory Board on  
 Safety and Health Codes Board  
 Seed Potato Board  
 Social Services, Board of  
 Social Work, Board of  
 State Health Department Sewage Handling and Disposal Appeal Review Board  
 Substance Abuse Certification Board  
 Surface Mining Review, Board of  
 Treasury Board  
 Veterans' Affairs, Board on  
 Veterinary Medicine, Board of  
 Virginia Board for Asbestos Licensing  
 Virginia Health Planning Board  
 Virginia Manufactured Housing Board  
 Virginia Veterans Care Center Board of Trustees  
 Virginia Waste Management Board  
 Visually Handicapped, Virginia Board for the  
 Waste Management Facility Operators, Board for  
 Water Control Board, State  
 Waterworks and Wastewater Works Operators, Board for  
 Well Review Board, Virginia  
 Youth and Family Services, State Board of.

B. Individual members of boards, commissions, committees, councils, and other similar bodies appointed at the state level and receiving compensation for their services on January 1, 1980, but who will not receive compensation under the provisions of this article, shall continue to receive compensation at the January 1, 1980, rate until such member's current term expires.

§ 9-6.23. Prohibition against service by legislators on boards and commissions within the executive branch.

Members of the General Assembly shall be ineligible to serve on boards and commissions within the executive branch which are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board on Veterans' Affairs, who shall be appointed as provided for in § 2.1-741; to members of the Council on Indians, who shall be appointed as provided for in § 9-138.1; to members of the Virginia Technology Council, who shall be appointed as provided for in § 9-145.51; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided in § 23-231.3; to members of the Maternal and Child Health Council, who shall be appointed as provided for in § 9-318; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided in § 2.1-750; to members of the Advisory Council on the Virginia Business-Education Partnership Program, who shall be appointed as provided in § 9-326; to members of the Advisory Commission on Welfare Reform, who shall be appointed as provided in § 63.1-133.44; ~~or~~ to members of the Virginia Correctional Enterprises Advisory Board, who shall be appointed as provided in § 2.1-451.2; *or to members of the Commonwealth Competition Commission, who shall be appointed as provided in § 9-337.*

§ 9-6.25:1. Advisory boards, commissions and councils.

There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

- Advisory Board for the Department for the Deaf and Hard-of-Hearing
- Advisory Board for the Department for the Aging
- Advisory Board on Child Abuse and Neglect
- Advisory Board on Medicare and Medicaid
- Advisory Board on Occupational Therapy
- Advisory Board on Physical Therapy to the Board of Medicine
- Advisory Board on Rehabilitation Providers
- Advisory Board on Respiratory Therapy to the Board of Medicine
- Advisory Board on Teacher Education and Licensure
- Advisory Council on Revenue Estimates
- Advisory Council on the Virginia Business-Education Partnership Program
- Appomattox State Scenic River Advisory Board
- Aquaculture Advisory Board
- Art and Architectural Review Board
- (Effective until July 1, 1995) Board for the Visually Handicapped
- Board of Directors, Virginia Truck and Ornaments Research Station
- Board of Forestry
- Board of Military Affairs
- Board of Rehabilitative Services
- Board of Transportation Safety
- Board of Trustees of the Family and Children's Trust Fund
- Board of Visitors, Gunston Hall Plantation
- Board on Veterans' Affairs
- Catoctin Creek State Scenic River Advisory Board
- Cave Board
- Chickahominy State Scenic River Advisory Board
- Clinch Scenic River Advisory Board
- Coal Surface Mining Reclamation Fund Advisory Board
- Commonwealth Competition Council*
- Council on Indians

Council on the Status of Women  
 Debt Capacity Advisory Committee  
 Emergency Medical Services Advisory Board  
 Falls of the James Committee  
 Film Office Advisory Board  
 Forensic Science Advisory Board  
 Goose Creek Scenic River Advisory Board  
 Governor's Council on Alcohol and Drug Abuse Problems  
 Governor's Mined Land Reclamation Advisory Committee  
 Hemophilia Advisory Board  
 Human Services Information and Referral Advisory Council  
 Industrial Development Services Advisory Board  
 Interagency Coordinating Council on Housing for the Disabled  
 Interdepartmental Board of the State Department of Minority Business Enterprise  
 Laboratory Services Advisory Board  
 Local Advisory Board to the Blue Ridge Community College  
 Local Advisory Board to the Central Virginia Community College  
 Local Advisory Board to the Dabney S. Lancaster Community College  
 Local Advisory Board to the Danville Community College  
 Local Advisory Board to the Eastern Shore Community College  
 Local Advisory Board to the Germanna Community College  
 Local Advisory Board to the J. Sargeant Reynolds Community College  
 Local Advisory Board to the John Tyler Community College  
 Local Advisory Board to the Lord Fairfax Community College  
 Local Advisory Board to the Mountain Empire Community College  
 Local Advisory Board to the New River Community College  
 Local Advisory Board to the Northern Virginia Community College  
 Local Advisory Board to the Patrick Henry Community College  
 Local Advisory Board to the Paul D. Camp Community College  
 Local Advisory Board to the Piedmont Virginia Community College  
 Local Advisory Board to the Rappahannock Community College  
 Local Advisory Board to the Southwest Virginia Community College  
 Local Advisory Board to the Thomas Nelson Community College  
 Local Advisory Board to the Tidewater Community College  
 Local Advisory Board to the Virginia Highlands Community College  
 Local Advisory Board to the Virginia Western Community College  
 Local Advisory Board to the Wytheville Community College  
 Long-Term Care Council  
 Maternal and Child Health Council  
 Medical Advisory Board, Department of Motor Vehicles  
 Medical Board of the Virginia Retirement System  
 Migrant and Seasonal Farmworkers Board  
 Motor Vehicle Dealer's Advisory Board  
 Nottoway State Scenic River Advisory Board  
 Personnel Advisory Board  
 Plant Pollination Advisory Board  
 Private College Advisory Board  
 Private Enterprise Commission  
 Private Security Services Advisory Board  
 Psychiatric Advisory Board  
 Radiation Advisory Board  
 Rappahannock Scenic River Advisory Board  
 Recreational Fishing Advisory Board, Virginia  
 Reforestation Board

Retirement System Review Board  
 Rockfish State Scenic River Advisory Board  
 Shenandoah State Scenic River Advisory Board  
 Small Business Advisory Board  
 Small Business Environmental Compliance Advisory Board  
 St. Mary's Scenic River Advisory Committee  
 State Advisory Board on Air Pollution  
 State Advisory Board for the Virginia Employment Commission  
 State Building Code Technical Review Board  
 State Council on Local Debt  
 State Health Benefits Advisory Council  
 State Insurance Advisory Board  
 State Land Evaluation Advisory Council  
 State Networking Users Advisory Board  
 State Public Records Advisory Council  
 Statewide Independent Living Council  
 Statewide Rehabilitation Advisory Council  
 Statewide Rehabilitation Advisory Council for the Blind  
 Staunton Scenic River Advisory Committee  
 Telecommunications Relay Service Advisory Board  
 Tourism and Travel Services Advisory Board  
 Toxic Substances Advisory Board  
 Virginia Advisory Commission on Intergovernmental Relations  
 Virginia Advisory Council for Adult Education and Literacy  
 Virginia Coal Mine Safety Board  
 Virginia Coal Research and Development Advisory Board  
 Virginia Commission for the Arts  
 Virginia Commission on the Bicentennial of the United States Constitution  
 Virginia Correctional Enterprises Advisory Board  
 Virginia Council on Coordinating Prevention  
 Virginia Equal Employment Opportunity Council  
 Virginia Interagency Coordinating Council  
 Virginia Military Advisory Council  
 Virginia Public Buildings Board  
 Virginia Recycling Markets Development Council  
 Virginia Technology Council  
 Virginia Transplant Council  
 Virginia Water Resources Research Center, Statewide Advisory Board  
 Virginia Winegrowers Advisory Board.

#### CHAPTER 43.

#### VIRGINIA GOVERNMENT COMPETITION ACT OF 1995.

§ 9-334. *Short title.*

*This chapter shall be known and may be cited as the "Virginia Government Competition Act of 1995."*

§ 9-335. *Definitions.*

*As used in this chapter, unless the context otherwise requires:*

*"Council" means the Commonwealth Competition Council.*

*"Privatization" means a variety of techniques and activities which promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.*

*"State agency" means any board, council, authority, department, agency, or institution of the Commonwealth which employs state or nonstate personnel.*

§ 9-336. *Commonwealth Competition Council created; duties.*

There is hereby created in the executive branch the Commonwealth Competition Council. The Council shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Council's findings and recommendations.

2. Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government.

3. Establish a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without harming the public.

4. Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.

5. Advocate, develop and accelerate implementation of a competitive program for state entities to ensure competition for the provision or production of government services, or both, from both public and private sector entities.

6. Establish approval, planning, and reporting processes required to carry out the functions of the Council.

7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity which is subject to a privatization recommendation.

9. To the extent practicable and to the extent that resources are available, make its services available for a fair compensation to any political subdivision of the Commonwealth.

§ 9-337. Membership; appointment; terms; vacancies; chairman; quorum; compensation.

A. The Council shall be composed of ten members to be appointed as follows: four employees of executive branch agencies to be appointed by the Governor; one member of the House of Delegates to be appointed by the Speaker of the House; one member of the Senate to be appointed by the Senate Committee on Privileges and Elections; two members of the private sector to be appointed by the Governor; one member of the private sector to be appointed by the Speaker of the House; and one member of the private sector to be appointed by the Senate Committee on Privileges and Elections.

B. Legislative members shall serve on the Council until the expiration of their terms of office or until their successors shall qualify. Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor shall be appointed for terms of one year. Two of the members who are employees of executive branch agencies and one member from the private sector appointed by the Governor shall be appointed for terms of two years. The nonlegislative members appointed by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections shall be appointed for terms of three years. Thereafter all nonlegislative members of the Council shall be appointed for terms of three years.

C. Appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive three-year terms. Executive branch agency members shall serve only as long as they retain their positions.

D. The Council shall annually elect its chairman and vice chairman from among its members.

E. Six members of the Council shall constitute a quorum. No action shall be taken by the Council without the concurrence of at least six members.

F. Legislative members shall be compensated as specified in § 14.1-18, and all members of the Council shall be reimbursed for their actual expenses incurred in the performance of their duties.

§ 9-338. Cooperation of other state agencies.

All agencies of the Commonwealth shall cooperate with the Council and, upon request, assist the Council in the performance of its duties and responsibilities. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

§ 9-339. Staff support; application for an acceptance of gifts and grants.



A. The Council shall employ such staff as necessary to enable it to perform its duties as directed in the appropriation act.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity which provides a gift, donation or grant shall be eligible for a contract award which results from action of a Council recommendation.

**§ 9-340. Unsolicited proposals.**

The Governor or the General Assembly may direct any state agency to perform a public/private performance analysis covering any service for which the Council has received a qualifying unsolicited proposal from a private entity which is consistent with the Council's purposes and duties as provided in § 9-336.

**§ 9-341. Public/private performance analysis.**

A. The Council shall use the procurement methods cited in the Virginia Public Procurement Act (§ 11-35 et seq.) to solicit proposals and bids from private entities in order to make cost comparison decisions. However, the Council shall not execute contracts.

B. The Council shall explore methods to encourage state agencies to compete for contracts.

**§ 9-342. Duties of the Department of Planning and Budget.**

The Department of Planning and Budget shall determine the amount of the existing appropriation no longer needed by the state agency or institution and shall unallot such funding. The Department shall also ensure that all appropriate reporting requirements to the Governor and the General Assembly are met. Nothing in this section shall preclude the Governor from recommending in future budget submissions the restoration of a portion of the original appropriation to the state agency or institution.

**§ 9-343. Reports to Governor and General Assembly.**

The Council shall annually by December 1 report its findings and recommendations to the Governor and the General Assembly. The Council may make interim reports to the Governor and the General Assembly as it deems advisable.